

Claimant alleges he suffered an injury to his groin area at work on Friday, December 15, 1995. The following Monday he telephoned his employer and reported his injury to somebody identified only as "Debbie." Respondent contends this notice was

insufficient to meet the requirements of K.S.A. 44-520 because Debbie was not claimant's supervisor. K.S.A. 44-520 provides the following:

"Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice."

Claimant admits he did not give notice to anyone else within 10 days, and he is not now alleging that there was just cause for his failure to give notice within 10 days so as to extend the time for giving notice to 75 days after the date of accident. Likewise, claimant does not allege actual knowledge of accident by the employer or that the employer was unavailable to receive notice or that the employee was unable to give notice. Accordingly, if the notice given to Debbie on the Monday following claimant's alleged date of accident is found to be inadequate, claimant's claim would be time barred by K.S.A. 44-520.

Claimant concedes that Debbie was not his supervisor. It does not appear that claimant is alleging that Debbie is a supervisory level employee of respondent. However, claimant does allege that Debbie is a designated agent of respondent for the purpose of receiving notice of accidents.

Debbie worked in the personnel department as the assistant to someone named Vicki Hancock who appears to be the head of personnel and payroll for respondent. When claimant was asked what Debbie's role within the company was, he responded:

"All I know is she took care of Honda payroll, and when we had to report anything, we had to report it -- basically we reported anything to her like personnel changes or anything, and then she was to relay it -- she was our point of first contact, because, like I say, Vicki was very busy, over-worked, and she was kind of the last-ditch effort trying to get ahold of." (Preliminary hearing at 30-31).

Claimant further testified that the reason he notified Debbie of his injury was:

"Because the personnel department is who we were suppose to report any injuries or anything related to if we needed to send somebody to minor emergency. . . ." (Preliminary hearing at 33).

Claimant was the only witness to testify at the preliminary hearing. Therefore, his testimony is uncontradicted that he gave notice within three days of his accident to Debbie in the personnel department, that Debbie was the appropriate person to whom accidents were to be reported and that his actions were consistent with the established policies and procedures of respondent. Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless shown to be untrustworthy and is otherwise ordinarily regarded as conclusive. See Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976). Accordingly, the Appeals Board finds that Debbie was an agent of the respondent for the purpose of receiving notice of accident. As such, claimant gave timely notice and the Order of the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on December 20, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

c: Steven L. Foulston, Wichita, KS
P. Kelly Donley, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director